

TITLE 22
AGRICULTURE AND HORTICULTURE

CHAPTER 19
THE IDAHO INVASIVE SPECIES ACT OF 2008

22-1901. TITLE. This chapter shall be known as "The Idaho Invasive Species Act of 2008."

[22-1901, added 2008, ch. 387, sec. 1, p. 1062.]

22-1902. LEGISLATIVE FINDINGS. The legislature finds that:

(1) The purpose of this chapter is to address the concerns about the increasing threat of invasive species by providing policy direction, planning and authority to combat invasive species infestations throughout the state and to prevent the introduction of new species that may be harmful;

(2) The land, water and other resources of Idaho are being severely affected by invasions of an increasing number of harmful, invasive species;

(3) These invasions are damaging Idaho's environment and causing economic hardships;

(4) Idaho is a national leader in the control of invasive species, particularly noxious weeds and agricultural pests, and has a strong network of local, state, federal, tribal and private entities actively and cooperatively combating the threat;

(5) Prevention, early detection, rapid response and eradication are the most effective and least costly strategies against invasive species because they combat new invasions before they expand beyond feasible control;

(6) Implementing these strategies requires the state of Idaho to enhance its capacity to prioritize risks, prevent new invasions, employ early detection and rapid response techniques, apply state of the art control and management strategies, coordinate multiple public and private efforts and involve the public;

(7) An effective invasive species program must foster and support local initiatives; and

(8) The multitude of public and private entities with an interest in controlling and preventing the spread of harmful invasive species in Idaho need a mechanism for cooperation and collaboration to meet the threat of invasive species.

[22-1902, added 2008, ch. 387, sec. 1, p. 1062.]

22-1903. ADMINISTRATION. This chapter shall be administered by the Idaho state department of agriculture.

[22-1903, added 2008, ch. 387, sec. 1, p. 1063.]

22-1904. DEFINITIONS. Unless otherwise noted in this chapter the definitions as set forth in section [22-2005](#), Idaho Code, are adopted by reference.

(1) "Conveyance" means a terrestrial or aquatic vehicle or a vehicle part that may carry or contain an invasive species or plant pest. A conveyance includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal watercraft, a trailer or any other means or method of transportation. "Conveyance" also includes a live well or a bilge area of a watercraft.

(2) "Environmental harm" means to cause significant adverse effects on uses of natural resources or on plants or animals.

(3) "Invasive species" means species not native to Idaho, including their seeds, eggs, spores, larvae or other biological material capable of propagation, that cause economic or environmental harm and are capable of spreading in the state. "Invasive species" does not include crops, improved forage grasses, domestic livestock, or other beneficial nonnative organisms.

[22-1904, added 2008, ch. 387, sec. 1, p. 1063; am. 2010, ch. 342, sec. 1, p. 898.]

22-1905. PROHIBITED ACTIONS. No person may import, export, purchase, sell, barter, distribute, propagate, transport or introduce an invasive species into or within the state of Idaho and no person may possess an invasive species, except:

- (1) Under a permit issued by the director;
- (2) When being transported to an appropriate state authority, or another destination as such authority may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species;
- (3) When being transported for disposal as part of an approved control activity under a permit issued pursuant to section [22-1906](#), Idaho Code;
- (4) When the specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise rendered nonviable;
- (5) In the form of herbaria or other preserved specimens, so long as such specimens are rendered nonviable; or
- (6) As the director may otherwise prescribe by rule.

[22-1905, added 2008, ch. 387, sec. 1, p. 1063.]

22-1906. DUTIES OF THE DEPARTMENT AND DIRECTOR. The department may prevent and control, by such means as shall be prescribed and provided by law, rule or by order of the department, all invasive species that may cause economic or environmental harm to the state. The director shall:

- (1) After due investigation, report the detection of new invasive species within the state to the appropriate state and federal officials;
- (2) Issue permits for the transport or possession of an invasive species into, within or through the state of Idaho. Permits shall include requirements to ensure the containment of that species, as may be prescribed in rule.

These duties shall not usurp existing provisions of the Idaho Code, programs that deal with invasive species issues, or the individual missions of any state agency or duplicate efforts existing upon passage of this act.

[22-1906, added 2008, ch. 387, sec. 1, p. 1063.]

22-1907. RULES AND ORDERS. The director is hereby authorized to promulgate rules necessary for the efficient enforcement of the provisions of this chapter. Rulemaking authority shall include, but not be limited to, the determination of which species are invasive and the establishment of procedures for testing, sampling, inspection, certification, permitting, compliance verification and recordkeeping. The director may by written order

designate a species as invasive until such time as it may be added to the official rules of the department.

[22-1907, added 2008, ch. 387, sec. 1, p. 1064.]

22-1908. AUTHORITY TO CONDUCT INSPECTIONS. (1) In order to accomplish the purposes of this chapter, the director may enter upon and inspect any public or private premises, lands, bodies of water, or means of conveyance, or article of any person within this state, for the purpose of inspecting, surveying, treating, controlling, collecting samples, or destroying any invasive species.

(2) The director may establish check stations at points of entry to the state, or other facilities and sites throughout the state, as necessary to carry out the provisions of this chapter.

(3) No person shall proceed past or travel through an established inspection station during its hours of operation while towing, carrying or transporting any conveyance without presenting such conveyance for inspection.

[22-1908, added 2008, ch. 387, sec. 1, p. 1064; am. 2010, ch. 342, sec. 2, p. 898.]

22-1909. DISPOSITION OF INVASIVE SPECIES. The director is authorized to seize, decontaminate or destroy any invasive species found in this state from public or private ownership or control as necessary to carry out the provisions of this chapter.

[22-1909, added 2008, ch. 387, sec. 1, p. 1064.]

22-1910. HOLD ORDER. The director may issue hold orders to take prompt regulatory action in invasive species emergencies on any article, commodity, conveyance, vehicle or other means of transportation entering this state when it is reasonably believed that the article, commodity, conveyance, vehicle or other means of transportation is in violation of this chapter or rules promulgated hereunder. The hold order shall contain contact information for the owner of the article, commodity, conveyance, vehicle or other means of transportation, the reason for the hold order, and the conditions for release.

[22-1910, added 2008, ch. 387, sec. 1, p. 1064; am. 2010, ch. 342, sec. 3, p. 899.]

22-1910A. LAW ENFORCEMENT. (1) It shall be the duty of all peace officers within the state of Idaho, as defined by section [19-5101](#)(d), Idaho Code, to enforce the provisions of this chapter by making a complaint or citation as described in section [19-3901](#), Idaho Code.

(2) Peace officers within the state of Idaho, upon reasonable suspicion that a conveyance is infested with quagga mussels or zebra mussels, may require a driver of a vehicle to stop and submit to an inspection of the exterior of any conveyance(s) in plain view.

(3) If the peace officer has probable cause to believe that the conveyance(s) are contaminated with quagga mussels or zebra mussels, or when a conveyance is found to be contaminated or otherwise carrying quagga mussels or zebra mussels, the peace officer shall detain the vehicle and con-

veyance(s) and immediately summon a tow truck to transport the conveyance(s) to the nearest available impound yard.

(4) Upon impoundment, the director shall issue a hold order as provided in this chapter specifying the conditions for release.

[22-1910A, added 2010, ch. 342, sec. 4, p. 899.]

22-1911. INVASIVE SPECIES FUND. There is hereby established in the state treasury an invasive species fund.

(1) The fund shall receive such appropriations as deemed necessary by the governor and the legislature to accomplish the goals of this chapter. The fund shall also receive moneys from the collection of reasonable fees for permits or as otherwise required by this chapter or rules promulgated hereunder. The fund may also receive, at the discretion of the director, moneys from any other lawful source including, without limitation, fees, penalties, fines, gifts, grants, legacies of money, property, securities or other assets, or any other source, public or private.

(2) Moneys in the invasive species fund are subject to appropriation for the purposes of this chapter. The fund shall be used to support activities related to the prevention, detection, control and management of invasive species in Idaho.

(3) All interest or other income accruing from moneys deposited to the fund shall be redeposited and accrue to the fund. Any unexpended balance left in the fund at the end of any fiscal year shall carry forward without reduction to the following fiscal year.

[22-1911, added 2008, ch. 387, sec. 1, p. 1064.]

22-1912. CONTROL AND ERADICATION COSTS -- DEFICIENCY WARRANTS -- COOPERATION WITH OTHER ENTITIES AND CITIZENS. Whenever the director determines that there exists the threat of an infestation of an invasive species on state-owned land or water, private, forested, range or agricultural land or water, and that the infestation is of such a character as to be a menace to state, private, range, forest or agricultural land or water, the director shall cause the infestation to be controlled and eradicated, using such moneys as have been appropriated or may hereafter be made available for such purposes. Provided however, that whenever the cost of control and eradication exceeds the moneys appropriated or otherwise available for that purpose, the state board of examiners may authorize the issuance of deficiency warrants against the general fund for up to five million dollars (\$5,000,000) in any one (1) year for such control and eradication. Control and eradication costs may include, but are not limited to, costs for survey, detection, inspection, enforcement, diagnosis, treatment and disposal of infected or infested materials, cleaning and disinfecting of infected premises or vessels and indemnity paid to owners for infected or infested materials destroyed by order of the director. The director, in executing the provisions of this chapter insofar as it relates to control and eradication, shall have the authority to cooperate with federal, state, county and municipal agencies and private citizens in control and eradication efforts; provided, that in the case of joint federal/state programs, state moneys shall only be used to pay the state's share of the cost of the control and eradication efforts. Such moneys for which the state shall thus become liable shall be paid as a part of the expenses of the Idaho state department of agriculture out of appropriations that shall be made by the legislature

for that purpose from the general fund of the state. In all appropriations hereafter made for expenses of the department, account shall be taken of and provision made for this item of expense.

[22-1912, added 2008, ch. 387, sec. 1, p. 1065.]

22-1913. PENALTIES FOR VIOLATIONS. (1) Any person who knowingly violates any provision of this chapter, or of the rules promulgated hereunder for carrying out the provisions of this chapter, or who fails or refuses to comply with any requirements herein specified, or who interferes with the department, its agents, designees or employees, in the execution, or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than three thousand dollars (\$3,000) or be imprisoned in a county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated hereunder may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense and shall be liable for reasonable attorney's fees.

(a) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(c) If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the department has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(e) All civil penalties collected pursuant to this section shall be remitted to the invasive species fund as authorized under section [22-1911](#), Idaho Code.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

[22-1913, added 2008, ch. 387, sec. 1, p. 1065.]

22-1914. COOPERATIVE AGREEMENTS. (1) The department may enter into cooperative agreements with persons and entities including, but not limited to, civic groups and governmental agencies, to adopt and execute plans to detect and control areas infested with invasive species. Such cooperative agreements may include provisions for funding to implement agreements.

(2) If an invasive species occurs and cannot be adequately controlled by individual persons, owners, tenants or local units of government, the department may conduct the necessary control measures independently or on a cooperative basis with federal or other units of government.

(3) The department shall have the authority to delegate selected and clearly identified elements of its authorities and duties to another agency of the state with appropriate expertise or administrative capacity upon mutual agreement with that agency. The department is authorized to enter into memoranda of agreement with other state agencies to implement the delegations authorized in this subsection. Such delegation may include provisions of funding for implementation of the delegations. The department shall retain primary authority and responsibility for all requirements of this chapter unless otherwise directed herein.

[22-1914, added 2008, ch. 387, sec. 1, p. 1066.]

22-1915. NO EFFECT ON EXISTING LIABILITY. The enactment of this chapter does not terminate or modify any civil or criminal liability relating to plant pests which exists prior to the effective date of this chapter.

[22-1915, added 2008, ch. 387, sec. 1, p. 1066.]

22-1916. HOLD HARMLESS. Any state or federal agency or contractor, its officers, agents and employees implementing or enforcing the provisions of this chapter shall be held harmless against all claims arising from the good faith enforcement and implementation of the provisions of this chapter and rules promulgated hereunder, in accordance with the Idaho tort claims act, [chapter 9, title 6](#), Idaho Code.

[22-1916, added 2008, ch. 387, sec. 1, p. 1066.]

22-1917. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[22-1917, added 2008, ch. 387, sec. 1, p. 1067.]